

Some Bugging Legal, D.C. Prosecutor Says

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The Justice Department's loudly proclaimed ban on electronic bugging leaves plenty of room for legal eavesdropping, U.S. Attorney David G. Bress said yesterday. The key to legality, he said, is that at least one party must consent to the eavesdropping.

Bress told reporters that his office still can:

- Monitor telephone conversations in which a consenting party fixes an induction coil and tape recorder to the phone.

- Transmit conversations from a private dwelling via miniature radio transmitter secreted in the clothing of an informer who has obtained permission to enter the dwelling.

- Record conversations in the conference rooms of the U.S. Attorney's office itself by covertly operated tape recorders.

Could Bug Newsmen

He said he could record conversations in his third-floor office at District Court with newsmen without their knowledge or consent.

"I haven't done it," he added. "It would be legal, but not ethical."

A Justice Department spokesman said Bress's opinions are consistent with those of Attorney General Ramsey Clark.

Clark, in fact, in a March 16 appearance before the House Judiciary Committee, which is studying the proposed 1967 Privacy Act, urged a general ban on bugging, saying, "only the most urgent need can justify wiretapping and other electronic surveillance."

Clark then added that "prohibitions against wiretapping and eavesdropping apply only where none of the parties to the conversations has consented to the activity."

The Supreme Court has consistently upheld bugging in which at least one party consented, he explained.

The distinction, as Bress sees it, is that it's all right for the police to plant an informer with a transmitter in a private dwelling, for example, but illegal to sneak into the same dwelling and plant the transmitter in a flower pot.

The informer presumably

would have given his consent to transmit conversations in the first instance, and no one would have consented to anything in the second instance.

Bress said that "to my knowledge," no covert surveillance is being conducted at the moment in any cases under investigation by his office. He also said no phones in the office are equipped for recording conversations.

Cites Eavesdropping

Only two cases in the recent past have involved eavesdropping, he said. One was the bribery-conspiracy case last month of five Washington policemen. Authorities monitored the conversations of three of the defendants by both phone and radio transmitter, using an informer as the person "consenting" to the conversations.

The other case involved a perjury charge against Washington attorney James J. Laughlin. Police and Assistant U.S. Attorney Harold J. Sullivan recorded conversations between Laughlin and a former Baltimore policewoman who was the principal witness against Laughlin in a 1966 trial.